

Order

Michigan Supreme Court
Lansing, Michigan

November 21, 2007

Clifford W. Taylor,
Chief Justice

133928

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 133928
COA: 267238
Livingston CC: 05-014970-FH

GARY STEVEN UPHAUS,
Defendant-Appellee.

By order of June 22, 2007, the application for leave to appeal the April 3, 2007 judgment of the Court of Appeals was held in abeyance pending the decisions in *People v Harper* (Docket No. 130988) and *People v Burns* (Docket No. 131898). On order of the Court, the cases having been decided on July 26, 2007, 479 Mich 599 (2007), the application is again considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE that portion of the judgment of the Court of Appeals holding that *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), applies to a trial court's factual determinations underlying a decision to depart from the sentencing guidelines. *People v Harper*, 479 Mich 599 (2007). We REMAND this case to the Court of Appeals to address the defendant's remaining arguments. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court.

We do not retain jurisdiction.

KELLY, J., would deny leave to appeal.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 21, 2007

Clerk